

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

FILED
CLERKS OFFICE

VICTOR P. CAPALDI
Plaintiff

v.

F/V GEORGIE J, her engines, boilers, equipment,
machinery, tackle, furnishings, apparel, appurtenances,
etc., including, but not limited to, its commercial fishing
licenses, permits, limited entry rights, quotas, moratorium
permits/licenses, and all other fishing rights, history,
privileges, or entitlements arising from, issued to,
attaching to, or appurtenant to said vessel, *in rem*
Defendant

2004 NOV -2 P 3:54

DISTRICT COURT
DISTRICT OF MASS.
Civil Action

No. 04-10843-JLT

PLAINTIFF'S MOTION TO CONFIRM INTERLOCUTORY SALE OF F/V GEORGIE J

Now comes the Plaintiff, Victor Capaldi, in the above-entitled matter and by and through his attorney, pursuant to Rule E(9) of the Supplemental Rules for Certain Admiralty and Maritime Matters of the Federal Rules of Civil Procedure, hereby request that this Honorable Court confirm the interlocutory sale of Defendant vessel F/V GEORGIE J (O.N. 502064), her engines, boilers, equipment, machinery, tackle, furnishings, apparel, appurtenances, etc., including, but not limited to, its commercial fishing licenses, permits, limited entry rights, quotas, moratorium permits/licenses, and all other fishing rights, history, privileges, or entitlements arising from, issued to, attaching to, or appurtenant to said vessel, (hereinafter referred to as the "Vessel"), to Mr. Carlos Rafael of 77 Tucker Lane, North Dartmouth, Massachusetts, 02747, upon the payment of the balance of the purchase price due and owing into

11-2-04
Carolyn M. Capaldi

the Registry of the Court at or before the confirmation hearing on November 15, 2004 at 10:00 am. As grounds the Plaintiff states the following:

On April 28, 2004, Plaintiff filed the above-captioned action against the F/V GEORGIE J to enforce a maritime lien for a tort arising under the general maritime law, as amended and recodified in the Commercial Instruments and Maritime Lien Act, 46 U.S.C. §31301, *et seq* in accordance with Rule C of the Supplemental Rules for Certain Maritime and Admiralty Claims of the Federal Rules of Civil Procedure for the *in rem* arrest of the vessel.

On April 28, 2004, this Honorable Court issued process in the form of an *in rem* warrant of arrest against the F/V GEORGIE J pursuant to Supplemental Rule C(3).

The United States Marshal served the Warrant upon the F/V GEORGIE J on May 4, 2004 while she lay afloat in New Bedford, Massachusetts. Thereafter, the Marshals Service transferred custody of the F/V GEORGIE J to the court-appointed substitute custodian, Fairhaven Shipyard & Marina, Inc.

On May 4, 2004 and May 5, 2004, Plaintiff's counsel by certified mail, return receipt requested served notice of this action and arrest to the owner of the F/V GEORGIE J, AGA Fishing Corporation and the lien holder(s) on record with the United States Coast Guard's National Vessel Documentation Center, Luzo Community Bank. *Exhibit A, B.*

On June 3, 2004, this Honorable Court granted Plaintiff's Ex Parte Motion for Order of Public Notice of Action and Arrest. This Court ordered that notice of the arrest and seizure be published once a week for two consecutive weeks in the New Bedford Standard Times and the Boston Herald. According to the Order, notice was published in the Boston Herald and Standard Times on June 15th and 22nd 2004. *Exhibit C, D.*

On May 12, 2004 and June 18, 2004, a claim was filed by the owner of the F/V GEORGIE J and Warren Alexander, an alleged potential buyer, respectively, pursuant to Supplemental Rules (C) and (E). On June 24, 2004, an answer was filed by both AGA Fishing Corp and Warren Alexander. Additionally, Warren Alexander asserted a counterclaim against the Plaintiff, Victor Capaldi.

On September 24, 2004, this Court ordered the Interlocutory sale of the F/V GEORGIE J at public auction by the United States Marshall on October 20, 2004 at 12:00 p.m.

Pursuant to the Court's Order, Plaintiff advertised the notice of interlocutory sale in the Boston Herald and New Bedford Standard Times on September 30, October 1, 7 and 8, 2004. *Exhibit E, F.* Additionally, the Plaintiff advertised in Boats & Harbors, a by weekly trade journal publication.

On September 28, 2004, pursuant to the Court's Order for Interlocutory Sale, Plaintiff notified the vessel owner, AGA Fishing Corp., *Exhibit G*, and all lien holders registered with the Nation Vessel Documentation Center, Luzo Community Bank. *Exhibit H.*

On October 20, 2004 at 12:00 pm, the United States Marshall duly and regularly conducted the public auction of the F/V GEORGIE J upon the premises of the Fairhaven Shipyard & Marina, Inc., 50 Fort Street, Fairhaven, Massachusetts as previously advertised and provided in the Court's Order for Interlocutory Sale of F/V GEORGIE J dated September 25, 2004.

Mr. Carlos Rafael, 77 Tucker Lane, North Dartmouth, Massachusetts, 02747, was the highest bidder submitting a bid of One Million Seven Hundred Thousand 00/100 Dollars (\$1,700,000.00). A deposit of One Hundred Thousand Dollars (\$100,000.00) was paid by Mr.

Carlos Rafael to the Marshals Service at the time of the sale, leaving a balance due and owing of One Million Six Hundred Thousand and 00/100 dollars (\$1,600,00.00).

The F/V GEORGIE J selling price of \$1,700,000.00 clearly reflects the fair market price of the vessel. At the auction, over ten people registered with the Marshals to bid. The bidding started at the minimum bid of One Million dollars in accordance with the Court's order of sale and then progressed as follows: 1,050,000.00, 1,300,000.00, 1,500,000.00, 1,550,000.00, 1,600,000.00, 1,650,000.00 until it stopped at \$1,700,000.00. The selling price of \$1,700,000.00 is double of what the Defendant has stated to this Court the boat was valued at and almost double of the alleged contract price of \$900,000.00 to purchase the F/V GEORGIE J between the owner of the F/V GEORGIE J and Claimant Alexander.

On October 28, 2004, Plaintiff notified the vessel owner, AGA Fishing Corp., and all lien holders registered with the Nation Vessel Documentation Center, Luzo Community Bank. that the F/V GEORGIE J was sold at auction on October 20, 2004 to Mr. Carlos Rafael and that a confirmation hearing will be held on November 15, 2004 at 10:00 a.m. at the United States District Court for the District of Massachusetts at Boston before the Honorable Judge Joseph L. Tauro. *Exhibit I, J.*

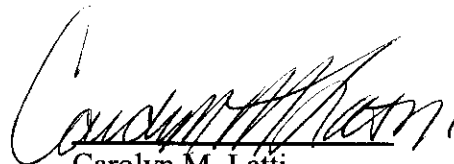
Based on the aforementioned, Mr. Carlos Rafael's bid and selling price of One Million Seven Hundred Dollars is the best price obtainable for defendant's vessel. Thus, Plaintiff respectfully requests that this Honorable Court enter an order confirming the interlocutory sale of the vessel to Mr. Carlos Rafael of 77 Tucker Lane, North Dartmouth, Massachusetts, 02747, direct the Clerk of Court to enter the confirmation and to transmit the confirmation to the United States Marshal for directing him to release and deliver the said vessel to Mr. Carlos Rafael of 77

Tucker Lane, North Dartmouth, Massachusetts, 02747, and to issue a bill of sale upon the payment of the balance owing, and all sums due and owing to the United States Marshals Service, including his commission and expenses of sale.

WHEREFORE, Plaintiff Victor Capaldi, requests the issuance of an order confirming the interlocutory sale of the Defendant vessel, F/V GEORGIE J (O.N. 502064), her engines, boilers, equipment, machinery, tackle, furnishings, apparel, appurtenances, etc., including, but not limited to, its commercial fishing licenses, permits, limited entry rights, quotas, moratorium permits/licenses, and all other fishing rights, history, privileges, or entitlements arising from, issued to, attaching to, or appurtenant to said vessel, (hereinafter referred to as the "Vessel"), to Mr. Carlos Rafael of 77 Tucker Lane, North Dartmouth, Massachusetts, 02747, and directing the Clerk of Court enter the confirmation and to transmit the confirmation to the United States Marshal for directing him to release and deliver the said vessel to Mr. Carlos Rafael of 77 Tucker Lane, North Dartmouth, Massachusetts, 02747, and issue a bill of sale upon the payment of the balance owing, and all sums due and owing to the United States Marshals Service, including his commission and expenses of sale.

Plaintiff has attached a proposed order.

Respectfully submitted,
VICTOR CAPALDI,
By his attorney,

A handwritten signature in black ink, appearing to read 'Carolyn M. Latti', is written over a horizontal line.

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DATED: November 2, 2004